

Hebrew Home & Hospital, Inc. and Teamsters Local Union 559, an affiliate of the International Brotherhood of Teamsters, AFL-CIO,¹ Petitioner. Case 34-RC-1133

August 31, 1993

DECISION ON REVIEW AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

On January 5, 1993, the Acting Regional Director for Region 34 issued a Decision and Direction of Election in which he found appropriate a unit of skilled maintenance employees at the Employer's nursing home. Thereafter, in accordance with Section 102.67(b) of the Rules and Regulations of the National Labor Relations Board the Employer filed a timely request for review of the Acting Regional Director's decision. Subsequently, on February 4, 1993, the Board granted the Employer's request for review but denied the Employer's request to stay the election. The election was conducted on February 4, 1993, pursuant to the Direction of Election and the ballots were impounded pending resolution of the issue on review.

Having carefully considered the entire matter in light of the entire record and the Employer's brief on review, the Board, for the reasons set forth in the Acting Regional Director's decision, has decided to affirm the Acting Regional Director's finding that the maintenance employees in the petitioned-for unit constitute an appropriate unit for collective bargaining under the Board's decision in *Park Manor Care Center*, 305 NLRB 872 (1992). Pertinent portions of the Acting Regional Director's Decision and Direction of Election are attached.

Accordingly, the Regional Director is directed to open and count the ballots cast by the employees in the election held on February 4, 1993, and take further appropriate action.

¹ The name of the Petitioner has been changed to reflect the new official name of the International Union.

APPENDIX

5. The Petitioner seeks to represent a unit consisting of nine employees employed by the Employer in its plant operations and maintenance department in the following classifications: Maintenance mechanic, licensed maintenance mechanical engineer, and licensed maintenance electrical engineer. Petitioner contends that these employees constitute an appropriate skilled maintenance unit in the health care industry. The Employer contends that the employees sought by Petitioner are not skilled maintenance employees and do not constitute an appropriate unit separate from the Employer's other unskilled, nonprofessional employees, many of whom are currently represented by another union, as noted below.

The Employer is a Connecticut corporation located in West Hartford, Connecticut, where it is engaged in the operation of a 334-bed long-term care facility for the elderly.² The Employer's facility consists of one four-story building containing 165,000 square feet of space. The Employer employs a total of approximately 468 employees, approximately half having been represented since 1968 by Local 1224 of the Laborers' International Union of North America (Local 1224) in a unit of certain nonprofessional employees, including clerks, nurses' aides, orderlies, porters, maids, kitchen employees, dietary employees, and housekeeping employees (the Local 1224 unit). There is no dispute that the plant operations and maintenance department employees at issue herein have historically been excluded from the Local 1224 unit. There is thus no history of collective bargaining involving the petitioned-for employees.³

In addition to the employees in the Local 1224 unit, the Employer employs approximately 236 other employees, including the 9 employees in the petitioned-for unit, all of whom are currently unrepresented. In addition to executive, managerial, and supervisory employees, this unrepresented group includes registered nurses, social workers, pharmacists, physical and occupational therapists, other professional employees, licensed practical nurses, business office, and other clerical employees and various other employees involved in different aspects of patient care.

Of the nine employees in the plant operations and maintenance department sought by Petitioner, six are classified as maintenance mechanics, two as licensed maintenance mechanical engineers, and one as a licensed maintenance electrical engineer. Until July 1992, when the two licensed classifications created, all employees in the department were classified as maintenance mechanics. Primarily responsible for the overall supervision of the plant operations and maintenance department is Director of Plant Operations Gary Moody, who reports directly to the Employer's vice president and chief financial officer, David Houle.⁴ Reporting directly to Moody are the licensed mechanical maintenance engineers and the licensed maintenance electrical engineer, the plant engineer, Andy Higgins;⁵ an administrative assistant, Theresa Kenny; and three security officers who guard the Employer's facility between 3 p.m. and 6 a.m. The six maintenance mechanics report directly to the plant engineer.

The plant operations and maintenance department is located on the ground floor of one wing of Respondent's facility. The petitioned-for employees report to that department, where their timeclock is located, and where they spend 40-

² The parties have stipulated, and the record establishes, that the Employer is not an acute care hospital within the meaning of the Board's Rule Regarding *Collective-Bargaining Units in the Health Care Industry*, 29 CFR § 103.30.

³ Although served with notice of the filing of the Petition and a copy of the notice of hearing, Local 1224 has not sought to intervene in this proceeding. Moreover, the president and business manager of Local 1224, who appeared at the hearing as a witness for the Employer, testified that Local 1224 is not seeking to represent the employees sought by the Petitioner.

⁴ Also reporting to Houle is the controller and the following departments: pharmacy, rehabilitation, environmental services, and materials management, each of which include both represented and unrepresented employees.

⁵ The parties stipulated that the plant engineer is a supervisor within the meaning of Sec. 2(11) of the Act.

45 percent of their work day. There is no evidence that any other employees use this timeclock or regularly work in their area. The plant operations maintenance department is located near the toolroom, boilerroom, electrical room, generator room, and other utilities on which the petitioned-for employees work. Also located on the ground floor is the employee cafeteria, the dietary department, laundry, offices for the environmental services department, and several other unspecified departments.

The petitioned-for employees work a variety of schedules. Two maintenance mechanics work from 6 a.m. to 2:30 p.m.; one maintenance mechanic and two of the licensed mechanics work from 7 a.m. to 3:30 p.m.; the other licensed mechanic works only on weekends; two maintenance mechanics work from 3 to 11 p.m.; and the remaining maintenance mechanic works a part-time schedule which is not disclosed in the record. The record is silent regarding the hours of work of the Employer's other employees.

Employees in the maintenance description, are generally responsible for maintaining continuous safe functioning of utility systems throughout the physical plant, within the limits of their ability, by surveying physical plant utilities and services in order to maintain normal operations, maintain plant equipment, execute routine and emergency repairs throughout the facility, and respond to emergency calls for assistance. Their specific duties include repairs and replacements, mechanical inspection rounds, re-lamping rounds, cleaning and maintaining the maintenance department, greasing, oiling and changing filters on all mechanical equipment, and assisting in snow removal and other grounds maintenance.

Employees in the licensed maintenance mechanical engineer position, according to their job description, are generally responsible for performing a variety of routine-to-skilled general preventive mechanical maintenance duties in the repair, alteration, and modification of buildings, equipment, and facilities. Their specific duties include: (a) inspecting equipment and facilities for proper operation and working condition; (b) determining the type and extent of malfunction of equipment and performing necessary repairs thereon; (c) attending to gas-fired steam boilers, hot water boilers and heaters, and performing necessary adjustments and repairs thereon; (d) servicing and repairing heating, air-conditioning, and refrigeration equipment; (e) performing general mechanical maintenance of hospital and clinic equipment, kitchen equipment, office machines, and equipment; (f) performing general maintenance to steam, gas, water, air, and sanitary plumbing pipes and fixtures; (g) performing general welding of metals; (h) performing routine maintenance of motors and other machinery, cleaning sink and grease traps, replacing and repairing valves, and assembling equipment; and (i) performing routine manual duties such as moving supplies, furniture, and equipment, removing trash and scrap material and replacing light bulbs.

Employees in the licensed maintenance electrical engineer position, according to their job description, possess the same general responsibilities as the licensed maintenance mechanical engineer, except that instead of performing the "mechanical maintenance" duties noted in items (e) and (f) above, they perform routine electrical maintenance, such as the replacement or alteration of circuit wiring, switches, control equipment and mechanisms, motors, transformers, relays,

generators, appliances, fixtures, alarms, and communication equipment, and general electrical maintenance of hospital and clinic equipment, kitchen equipment, and office machines and equipment.

Although the above described job descriptions would appear on their face to distinguish the type of duties performed by the six maintenance mechanics as opposed to the three licensed engineers, testimony in the record reveals that all of the petitioned-for employees perform essentially the same function, i.e., maintaining the physical plant utilities and services of the Employer, including boilers, heating, ventilation, refrigeration, and air-conditioning systems, communications equipment, motorized beds and doors, and other machinery equipment in the Employer's facility. In addition to performing routine periodic inspections to make sure that the equipment is running properly, the petitioned-for employees make repairs when determined to be necessary, either through inspection or in response to a work order received from another department. In performing these duties, the petitioned-for employees do plumbing and electrical work, welding, carpentry, and other functions associated with maintaining the Employer's machinery and equipment. They work with tools commonly used in performing such work, including welding equipment, brazing torches, ampereters, ohmmeters, and voltmeters. Because the Employer's heating, air-conditioning, and telephone systems are computerized, the petitioned-for employees must also have some familiarity with computers. One of the maintenance mechanics is also responsible for making the Employer's signs by utilizing an engraving machine and a vinyl signmaking machine.

The petitioned-for employees have also performed other assigned tasks, including the renovation of office space, which may involve the construction of walls and electrical wiring. They have also responded to fire alarms, controlled traffic, and assisted with groundskeeping during major events several times a year, served as messengers or delivery persons, and serviced copy machines. Finally, one maintenance mechanic spends about 15-20 minutes per day going to the post office to pick up and deliver the Employer's mail.

Thus, the record reflects that the primary distinction between the maintenance mechanics and the licensed engineers are their job qualifications. In this regard, the maintenance mechanics are required to be high school or trade school graduates with basic experience in electrical, plumbing, heating, cooling, carpentry, and similar work related to maintenance systems in medium to large plant facilities. However, two of the maintenance mechanics did not graduate high school, although one of them possessed heating, ventilation, and air-conditioning experience from prior employment. In addition, although three of the maintenance mechanics apparently possessed no special skills at the time they were hired, two of them have worked for the Employer as maintenance mechanics for more than 9 years and have received training on the job. Although the third employee has only been employed by the Employer as a maintenance mechanic for 6 months, the record revealed no evidence that he does not perform the same or similar duties as the remaining employees in the petitioned-for unit. Because the maintenance mechanics are not required to possess any specific license, they must perform work which would otherwise be done by a licensed engineer under the direct supervision of the plant engineer.

The two licensed maintenance mechanical engineers, however, each of whom worked for the Employer as maintenance mechanics, possess D2 licenses issued by the State of Connecticut. One employee obtained his license after completing an apprenticeship program run by the Employer. The licensed maintenance electrical engineer, who began his employment on October 5, 1992, possesses an E2 license, also issued by the State of Connecticut. The record is silent regarding the requirements for obtaining such licenses and the benefits associated with having them, other than the apparent ability to independently perform plumbing, mechanical, and electrical work.

In contrast to the specialized skills and functions of the employees in the petitioned-for unit, the Local 1224 unit employees in the environmental services department perform unskilled janitorial and housekeeping tasks such as sweeping, mopping and waxing floors, dusting furniture, and emptying trash receptacles. Although these employees may clean and lube equipment such as floor buffers before starting their job, more technical repair or maintenance work needed on such equipment must be reported to supervision to be performed by employees in the petitioned-for unit. The relatively unskilled nature of the work performed by the employees in the environmental services department is demonstrated by the fact that a high school diploma is not required of applicants for these positions. Although under the overall supervision of Houle, the Employer's vice president, employees in the environmental services department report to different supervisory structure, including environmental services supervisors, an assistant director, and a director of environmental services. Thus, Director of Plant Operations Moody, who supervises the employees in the petitioned-for unit, has no supervisory authority over any employees in the environmental services department.

All of the Employer's employees, except ward clerks, wear uniforms which differ in color according to job classification. The petitioned-for employees wear dark blue pants and light blue shirts with name tags. Security officers also wear blue uniforms, but of a different shade. Employees in the environmental services department, who, as noted above, perform housekeeping functions, wear green uniforms, while dietary and nursing employees wear traditional white uniforms.

All of the Employer's employees share the same benefits with the exception of a pension plan and a legal services plan which are available only to employees in the Local 1224 unit. However, the petitioned-for employees are covered by the Employer's pension plan. The wages paid to the petitioned-for employees vary from those received by Local 1224 unit employees. More specifically, under the current collective-bargaining agreement between the Employer and Local 1224, dietary, housekeeping, and laundry employees are paid between \$11.20 and \$11.45 per hour, depending on length of service, while nurses aides, orderlies, and ward clerks are paid between \$11.20 and \$11.60 per hour, also based on length of service. The three licensed maintenance engineers are paid on a salary basis at a rate equivalent to \$11.75 and \$12.02 per hour, which is clearly higher than any employee covered by the collective-bargaining agreement. However, two of the maintenance mechanics receive hourly wages which are slightly higher than the Local 1224 unit employees, one receives an hourly wage equivalent to the low-

est rate in the Local 1224 unit, and the remaining three maintenance mechanics are paid between \$9.85 and \$11.03 per hour, which is clearly less than any Local 1224 unit employee. The wages paid to the Employer's other unrepresented employees vary widely because of the diversity of skills and classifications in the group. Thus, professional employees such as registered nurses, social workers, pharmacists, and the licensed practical nurses, are paid substantially more than even the licensed maintenance engineers. On the other hand, some lesser-skilled staff involved in patient care, such as physical therapy aides, recreation aides, and adult day care staff, receive wages approximately equivalent to the maintenance mechanics. Only relatively unskilled, unrepresented employees, such as homemakers, receive substantially less than any of the maintenance mechanics.

The record reveals very little evidence of any significant interchange between employees in the plant operations and maintenance department and the Employer's other employees. Such interchange is limited to incidental contact while the petitioned-for employees are performing maintenance and repair functions, and communication between the petitioned-for employees and other employees necessary to make repairs on equipment utilized by the other employees. In addition to such incidental contact, the record reveals that several times a year the petitioned-for employees may work alongside employees in the environmental services department in preparation for and during major events at the facility. There is also evidence that, on rare occasions, an employee in the petitioned-for unit has filled in for an absent security officer when no other security officer was available.⁶ In contrast, there is no evidence that any employees outside the plant operations and maintenance department have substituted for the petitioned-for employees. Moreover, the record reveals that there have been no transfers of employees between the plant operations maintenance department and any other department. However, maintenance mechanics have been promoted to licensed engineers within the plant operations and maintenance department.

Based on the above and the record as a whole, and utilizing the pragmatic approach adopted by the Board in *Park Manor Care Center*, 305 NLRB 872 (1991), I find that a unit limited to the maintenance mechanics, licensed maintenance mechanical engineers, and licensed maintenance electrical engineer employed in the Employer's plant operations and maintenance department is an appropriate unit for the purposes of collective bargaining. More particularly, I note the unique functions performed by these employees, the specialized skills possessed and utilized by the employees in carrying out their assigned duties, and the separate supervision from, and lack of interchange with, the Employer's other employees. Although the wages and benefits received by employees in the petitioned-for unit are comparable to those re-

⁶The record is ambiguous regarding the duties performed by the petitioned-for employees on those rare occasions when they fill in for an absent security officer. While it appears that they may direct traffic, assist the switchboard operator in evicting an unruly visitor, or make rounds to ensure that doors are locked, there is no evidence that they are responsible for enforcing the Employer's rules against employees or other persons, or that they routinely perform guard duties as defined in the Act. Since no party contends that any of the employees in the petitioned-for unit are guards within the meaning of the Act, I make no finding on this issue at this time.

ceived by the Employer's represented employees and many of its other unrepresented employees, this factor is outweighed by the other factors, discussed in more detail below, indicating that separate representation is appropriate. See *Allegheny General Hospital*, 239 NLRB 872 fn. 65 (1978), citing *American Cyanamid Co.*, 131 NLRB 909 (1961).

In making my determination herein, I have considered the evidence obtained by the Board during its rulemaking proceedings and find that many of the characteristics associated with separate skilled maintenance units in acute care hospitals are present here, albeit on a smaller scale. Thus, the petitioned-for employees perform functions apart from those of the unskilled employees in the environmental service department in that they deal with highly complex and sophisticated systems and equipment. The petitioned-for employees, like skilled maintenance employees in acute care hospitals, are generally engaged in the operation, maintenance, and repair of the Employer's physical plant systems, although they occasionally do routine, unskilled work. In this regard, and contrary to the Employer's contention the performance of such "unskilled" work by members of a "skilled" maintenance unit does not preclude the appropriateness of such a unit. See *Collective Bargaining in the Health Care Industry, Second Notice of Proposed Rulemaking*, 284 NLRB 1528, 1557 (1988); *McLean Hospital Corp.*, 309 NLRB 564 (1992).

Moreover, the petitioned-for employees possess specialized skills acquired through either education, work experience, or on-the-job training, which are different in nature than those possessed by the Employer's other employees. Thus, contrary to the Employer's contention, the fact that most or all of the maintenance mechanics lack any formal training or licenses does not preclude their inclusion in a separate skilled maintenance unit so long as they actually perform skilled maintenance work, fill the position of a trainee, or serve as helpers or assistants to skilled maintenance employees in the performance of their work. See *Barnes Hospital*, 306 NLRB 201 (1992).

In addition, as in acute care hospitals, the Employer's plant operations and maintenance department employees are separately supervised, and have only brief, limited, and incidental contact with other employees. I also note the lack of transfers between this department and others in the Employer's facility as demonstrating the different labor market and career paths for these employees. Thus, employees hired into the plant operations and maintenance department have experience outside the health care industry and possess skills which can be utilized in various other industries. *Collective-Bargaining Units in the Health Care Industry, Second Notice of Proposed Rulemaking*, supra at 1556-1562. Finally, as noted by the Board in applying the rule, the distinguishing feature of skilled maintenance employees is their work on systems and equipment as opposed to involvement in direct patient care. *Jewish Hospital of St. Louis*, 305 NLRB 955 (1991). This clearly distinguishes the employees in the petitioned-for unit from the Employer's other employees.

I have also considered relevant precedent in applying the *Park Manor* test to the facts herein. Thus, the Board has found separate units of skilled maintenance employees appropriate in a nursing home where the facts reveal that such employees possess a sufficiently separate community of interest to justify their own unit. *Hebrew Rehabilitation Center*, 230

NLRB 255 (1977). See also *McLean Hospital Corp.*, supra (separate skilled maintenance unit found to be appropriate in a psychiatric hospital). Cf. *Four Seasons Nursing Center of Joliet*, 208 NLRB 403 (1974) (separate maintenance unit at small nursing home inappropriate where maintenance employees performed only unskilled cleaning and maintenance duties with major repair work contracted out). Moreover, I find *Levine Hospital*, 219 NLRB 327 (1975), cited by the Employer in its posthearing brief, to be distinguishable. In dismissing a petition for a separate unit of medical records clerks and transcribers, the Board in *Levine* noted that petitioned-for employees were few in number and performed work which was functionally related to the work performed by union represented services and maintenance employees, and identical to work performed by other hospital clerical employees. In contrast, the work performed by the employees in the petitioned-for unit is unique and not functionally integrated with that of the Employer's other employees.

Finally, I have considered Congress' admonition to avoid proliferation of bargaining units in the health care industry and have concluded that a separate skilled maintenance unit here will not result in undue proliferation, for the same reasons the Board concluded that similar units in acute care hospitals did not result in undue proliferation. I also note that approximately half of the Employer's employees are already represented in a broad unit and that no union seeks to represent these employees as part of a larger unit. Moreover, many of the Employer's other unrepresented, nonsupervisory employees are professional employees and guards who would be entitled to separate representation under Section 9(b) of the Act.

Accordingly, based on the above and the record as a whole, I find that the following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time skilled maintenance employees employed in the Employer's Plant Operations and Maintenance Department, including Maintenance Mechanics, Licensed Maintenance Mechanical Engineers and Licensed Maintenance Electrical Engineers, but excluding the Director of Plant Operations, the Plant Engineer, the Administrative Assistant-plant operations,⁷ all other employees, and guards, professional employees and supervisors as defined in the Act.

⁷The record reveals that the administrative assistant in the plant operations department coordinates the work order system, answers phones, and provides general administrative support for the department. She works in the plant operations office and is supervised by the director of plant operations. She possesses skills commonly associated with other clerical employees. Her duties are very similar to those of other unrepresented administrative assistants and secretaries in the Employer's other departments. No party is seeking her inclusion in the petitioned-for unit. Accordingly, I conclude that her community of interests lies with other unrepresented clerical employees rather than the skilled maintenance employees in the unit found appropriate herein, and shall exclude her. See *Jewish Hospital of St. Louis*, supra; *Ingalls Memorial Hospital*, 309 NLRB 393 (1992); *Barnes Hospital*, supra.